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10/009,216	11/08/2001	Li Yang	791 170	5554

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PO BOX 7068
SYRACUSE, NY 13261-7068

EXAMINER

TSANG POSTER, SUSY N

ART UNIT

PAPER NUMBER

1745

DATE MAILED: 06/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.	Applicant(s)
10/009,216	YANG ET AL
Examiner	Art Unit
Susy N Tsang-Foster	1745

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 March 2004 and 08 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) 2-5, 10-16 and 20-24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 6-9, 17-19 and 25-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. This Office Action is responsive to the amendment filed on 3/4/2004 and the supplemental amendment filed on 3/8/2004. Claims 1-28 are pending. Claims 2-5, 10-16, and 20-24 are withdrawn from further consideration as being drawn to a non-elected species. The Examiner has requested certified copies of the priority documents from the International Bureau (IB) twice through Special Program Examiner Christine Tierney. SPRE Tierney requested these documents from the IB in April and has not received them to date. In the meantime, the Examiner will request these documents again from SPRE Tierney. The applicant can contact SPRE Tierney at (571)272-1055 to inquire why these documents have not been received from the IB to date.

Claims 1, 6-9, 17-19, and 25-28 are rejected for reasons given below. This Office Action is made non-final as new grounds of rejection are made that are not necessitated by applicant's amendment.

Specification

2. The amendment filed 3/4/2004 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows:

On page 9 of the amendment, inserting the phrase "is an example" after the phrase "P=O linkage" in the paragraph on starting page 38, line 13 of the specification constitutes new matter.

Applicant is required to cancel the new matter in the reply to this Office Action.

Claim Objections

3. Claim 1 is objected to because of the following informalities:

In claim 1, line 5, "as a electrolyte" should be "as an electrolyte".

Appropriate correction is required.

4. Claims 6-9 and 26-28 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form.

In claim 6, the limitation "said organic base of said compound (b) is a cyclic compound containing an electron-donating element" does not further limit claim 1 because claim 6 does not require that compound (b) be selected to be in at least one of the positive electrode, the negative electrode, the separator, and the nonaqueous electrolyte solution. Claim 6 merely recites that the organic base of compound (b) is a cyclic compound containing an electron-donating element which limits what compound (b) may contain but does not limit claim 1 because claim 6 does not require compound (b) to be in at least one of the positive electrode, the negative electrode, the separator, and the nonaqueous electrolyte solution.

In claim 7, the limitation "said organic base of said compound (b) contains an electron-donating substituent" does not further limit claim 1 because claim 7 does not require that compound (b) be selected to be in at least one of the positive electrode, the negative electrode, the separator, and the nonaqueous electrolyte solution. Claim 7 merely recites what compound (b) may contain but does not require compound (b) to be in at least one of the positive electrode, the negative electrode, the separator, and the nonaqueous electrolyte solution.

In claim 8, the limitation "said inorganic acid of said compound (b) is a strong acid" does not further limit claim 1 because claim 8 does not require that compound (b) be selected to be in at least one of the positive electrode, the negative electrode, the separator, and the nonaqueous electrolyte solution. Claim 8 merely recites what compound (b) may contain but does not require compound (b) to be in at least one of the positive electrode, the negative electrode, the separator, and the nonaqueous electrolyte solution.

In claim 9, the limitation "said inorganic acid of said compound (b) is hydrogen chloride or sulfuric acid" does not further limit claim 1 because claim 9 does not require that compound (b) be selected to be in at least one of the positive electrode, the negative electrode, the separator, and the nonaqueous electrolyte solution. Claim 9 merely recites what compound (b) may contain but does not require compound (b) to be in at least one of the positive electrode, the negative electrode, the separator, and the nonaqueous electrolyte solution.

In claim 26, the limitation "wherein the battery is for being mounted on a vehicle" does not further limit claim 1 which is a product claim. The intended use of the battery does not further limit the structure of the lithium secondary battery and is not given patentable weight in a product claim.

In claim 27, the limitation "wherein the battery is used for an electric vehicle or a hybrid electric vehicle" does not further limit claim 26 or claim 1, both of which are product claims. The intended use of the battery does not further limit the structure of the lithium secondary battery and is not given patentable weight in a product claim.

In claim 28, the limitation "wherein the battery is used for starting of an engine" does not further limit claim 26 or claim 1, both of which are product claims. The intended use of the battery does not further limit the structure of the lithium secondary battery and is not given patentable weight in a product claim.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claims 1, 6-9, 17-19, and 25-28 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for compounds given by chemical formulas I-VI on pages 17-19 of the specification as the compound having an organic base and an inorganic acid which are unitarily combined in a molecule, does not reasonably provide enablement for all compounds having an organic base and an inorganic acid which are unitarily combined in a molecule. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make the invention commensurate in scope with these claims.

The claimed invention encompasses compounds that are outside the scope of the working examples and disclosure. It is unclear if other compounds encompassed by the claims will work in a lithium battery without undue experimentation.

Not only are the claims broad, it appears that the amount of direction, the number of working examples, and the breath of claims are not commensurate in scope with the disclosure as originally filed. Hence undue experiment would be required to determine what other compounds other than those disclosed by applicant can be used to make and practice applicant's invention as claimed. It noted that an innumerable number of organic bases in combination with at least 51 known inorganic acids fall within the claimed invention other than the small fraction of examples disclosed to practice and use the present invention as claimed.

With respect to enablement commensurate in scope with the claims, section 2164.08 of the MPEP states:

"The determination of the propriety of a rejection based upon the scope of a claim relative to the scope of the enablement involves two stages of inquiry. The first is to determine how broad the claim is with respect to the disclosure. The entire claim must be considered. The second inquiry is to determine if one skilled in the art is enabled to make and use the entire scope of the claimed invention without undue experimentation...

The breadth of the claims was a factor considered in *Amgen v. Chugai Pharmaceutical Co.*, 927 F.2d 1200, 18 USPQ2d 1016 (Fed. Cir.), cert. denied, 502 U.S. 856 (1991).

In the *Amgen* case, the patent claims were directed to a purified DNA sequence encoding polypeptides which are analogs of erythropoietin (EPO). The Court stated that: *Amgen* has not enabled preparation of DNA sequences sufficient to support its all-encompassing claims. . . . [D]espite extensive statements in the specification

concerning all the analogs of the EPO gene that can be made, there is little enabling disclosure of particular analogs and how to make them. Details for preparing only a few EPO analog genes are disclosed. . . . This disclosure might well justify a generic claim encompassing these and similar analogs, but it represents inadequate support for Amgen's desire to claim all EPO gene analogs. There may be many other genetic sequences that code for EPO-type products. Amgen has told how to make and use only a few of them and is therefore not entitled to claim all of them. 927 F.2d at 1213-14, 18 USPQ2d at 1027.

Factors to be considered in determining whether the claimed invention would require undue experimentation are given in MPEP 2164.01(a). In re Wands, 858 F. 2d 731, 737; 8 USPQ 2d 1400, 1404 (Fed. Cir. 1988). Only the relevant factors will be addressed for determining undue experimentation of the presently claimed invention. The relevant factors are (A) Breadth of the claims; (B) The amount of direction provided by the inventor, (C) The existence of working examples, and (D) The quantity of experimentation needed to make or use the invention based on the content of the disclosure.

Factor (A) Breadth of the claims:

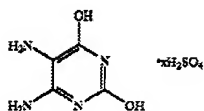
No guidance is given in the specification for the innumerable possible embodiments encompassed by the claims of a compound comprising an organic base and an inorganic acid unitarily combined while the specification is limited to a few examples.

Applicant specifically states on page 17 of the specification describing compound (b). Pages 17 and 19 of applicant's specification state:

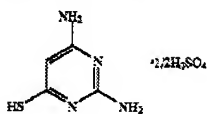
"Next, the aforementioned compound (b) is described.

Compounds where an organic base and an inorganic acid are united are specifically compounds wherein, as an organic base, a nitride-containing six-membered ring compound, a nitride-containing polycyclic compound or the like and, as an inorganic acid, a strong acid such as hydrogen chloride and sulfuric acid are united. Further, a compound where the above organic base contains electron-donating substituent is particularly suitably employed. Examples of such a compound are 1, 8 - diamino - 4, 5 - dihydroxycyanthracinon (Chemical formula I), 2, 4 - diamino - 6 - mercaptopyrimidine hemisulfate (Chemical formula II shown below), 6 - hydroxy - 2, 4, 5 - triaminopyrimidine sulfate (Chemical formula III shown below), 2 - iminopiperidine hydrochloride (Chemical formula IV shown below), inipramine hydrochloride (Chemical formula V shown below), and hexacyclen trisulfate (Chemical formula VI shown below.) These are suitably used as the compound because they are stable in an electrolyte solution and show high Li⁺ conductivity.

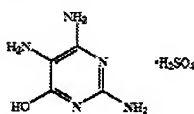
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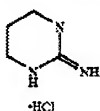
(Chemical formula I)



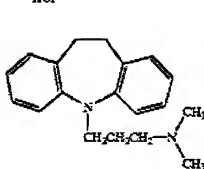
(Chemical formula II)



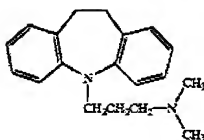
(Chemical formula III)



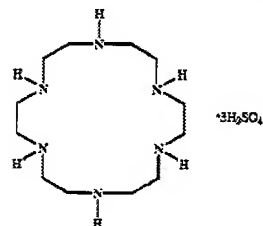
(Chemical formula IV)



(Chemical formula V)



(Chemical formula VI)



(Chemical formula VI)

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As disclosed by applicant in the specification, compound (b) has been specifically defined above as stated on page 17, lines 3-5 that "Compounds where an organic base and an inorganic acid are united are specifically compounds wherein, as an organic base, a nitride-containing six-membered ring compound, a nitride-containing polycyclic compound or the like and, as an inorganic acid, strong acid such as hydrogen chloride and sulfuric acid are united."

The specification does not give any guidance as to what other organic bases are encompassed as compounds where an organic base and an inorganic acid are united. The specification specifically limits the organic base to be a nitride-containing six-membered ring compound, and a nitride-containing polycyclic compound. The specification is silent as to what "and the like" encompasses. The specification also specifically discloses that the inorganic acid is a strong acid such as hydrogen chloride and sulfuric acid and does not disclose what other inorganic acid can be in compound (b) and the specification does not appear to encompass weak acids as the inorganic acid that comprises part of compound (b).

It is noted that the claimed invention is not limited to what is specifically disclosed in the specification as compound (b).

There are innumerable compounds that are organic bases and innumerable compounds or elements that are inorganic acids and the specification does not provide sufficient guidance to one of ordinary skill in the art as to which organic base and inorganic acid reaction product is encompassed by the claims as there are an infinite number of possible combinations. It would be undue experimentation to one of ordinary skill in the art to determine what compound having an organic base and an inorganic acid which are unitarily combined in a molecule is

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encompassed by the claim from at least thousands, if not millions of possibilities that would be suitable for use in a lithium secondary battery. There are at least thousands, if not millions of organic base compounds. Furthermore, there are 51 inorganic acids listed in the website <http://ifs.massey.ac.nz/resources/chemistry/dissociation/inorgacids.htm> (Dissociation Constants of Inorganic Acids [online]. Institute of Fundamental Sciences, Massey University. [retrieved on 2003-12-01]. Retrieved from the Internet: <URL: <http://ifs.massey.ac.nz/resources/chemistry/dissociation/inorgacids.htm> >). There are 30 inorganic acids listed in the website <http://www.cem.msu.edu/~reusch/VirtualText/acidity.htm> (Ionization Constants of Inorganic Acids [online]. Organic Chemistry Michigan State University. [retrieved on 2003-12-01]. Retrieved from the Internet : <<http://www.cem.msu.edu/~reusch/VirtualText/acidity.htm>>).

Therefore, there are thousands, if not millions, of compounds that can be obtained by the reaction product of an organic base and an inorganic acid.

Even if only two inorganic acids are claimed, there are still thousands, if not millions of combination with the organic base since there are thousands, if not millions of organic base compounds. There are also innumerable cyclic organic base compounds.

Hence, applicant's claimed invention is not commensurate in scope with the disclosure.

Factor (B) The amount of direction provided by the inventor.

Applicant only gives 6 examples of what compound (b) can be on pages 17-19 of the specification.

Factor (C) The existence of working examples:

Applicant disclosure of 6 examples of a compound that is an organic base and an inorganic acid unitarily combined does not entitle applicant to claim all of them.

Factor (D) The quantity of experimentation needed to make or use the invention based on the content of the disclosure.

This factor has been addressed by factor (A) above.

Applicant's claims encompass many subgenres of organic bases that are not defined such that the breadth of the claims are not commensurate in scope with applicant's disclosure.

The claims are thus properly rejected for scope of enablement since two stages of inquiry as set forth in MPEP section 2164.08 have been addressed above.

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 6-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 6, the limitation "a cyclic compound containing an electron-donating element" is indefinite because it is unclear which element or elements in the Periodic Table is meant by applicants to be an electron-donating element. All elements in the Periodic Table are capable of

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donating an electron depending on the environment in which the element is in. The applicant has not define the term "electron-donating element" is the specification or in the claims.

In claim 7, the limitation "said organic base of said compound (b) contains an electron-donating substituent" is indefinite because there is no reference point given for determining whether a substituent would be electron donating or electron withdrawing. That is, an electron donating substituent must be defined in relation to another chemical group to which is it bonded and an electron donating substituent is more electron rich compared to the chemical group to which it is bonded.

In claim 8, the limitation "a strong acid" is indefinite because the term "strong acid" is a relative term not defined in the specification or in the claims.

Claim Rejections - 35 USC § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

10. Claims 1, 6-9, 17-19, and 25-28 are rejected under 35 U.S.C. 102(e) as being anticipated by the IPDL JPO Machine Translation for JP 2000-077103A.

The IPDL JPO Machine Translation for JP 2000-077103 A discloses a lithium secondary battery comprising a positive electrode, a negative electrode, a nonaqueous electrolyte solution and a separator, and the positive and negative electrode being wound by means of the separator (paragraphs 1, 5, 7, 8 of machine translation). The positive electrode active material can be LiMn_2O_4 which is a spinel lithium manganese oxide and the negative electrode material can be graphite which is a carbon material (see paragraphs 11, 20, 21, and 53 of machine translation). The nonaqueous electrolyte solution comprises LiPF_6 as the lithium salt (paragraph 22 of machine translation) and either the nonaqueous electrolyte solution, the separator, the positive electrode, and the negative electrode can contain 2,2'-bipyridine (paragraph 37 of machine translation and JPO abstract) which is an organic base and would unitarily combine with HF which is an inorganic acid in the nonaqueous electrolyte to form a compound that is an organic base unitarily combined with an inorganic acid (see paragraphs 10, 13, 16 and 64 and claims 1-3, 9 of machine translation) and this compound would be present in either the nonaqueous electrolyte solution, the separator, the positive electrode, or the negative electrode since the separator, the positive electrode, or the negative electrode is permeated with the nonaqueous electrolyte solution in a battery. The reference also discloses that the lithium battery can be used in an electric vehicle (see paragraph 1 of machine translation). The reference also discloses that the capacity of the battery is 27 Ah which is greater than 2 Ah (see paragraph 56 of machine translation).

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11. Claims 1, 6-9, 17, 19, and 26-28 rejected under 35 U.S.C. 102(b) as being anticipated by the IPDL JPO Machine translation for JP 06-060877 A.

The IPDL JPO Machine translation for JP 06-060877 A discloses a lithium secondary battery comprising a positive electrode, a negative electrode, a separator, and a nonaqueous electrolyte solution where the negative electrode contains a higher amine halogen acid salt (paragraphs 1, 16, 24, 25 of machine translation). The nonaqueous electrolyte contains LiPF₆ (paragraph 26 of machine translation) and the battery contains a spiral wound electrode assembly (paragraphs 27 and 28 of machine translation). The negative electrode active material comprises carbon (paragraph 25 of machine translation).

Claim Rejections - 35 USC § 103

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over the IPDL JPO Machine translation for JP 06-060877 A in view of Zhong et al. (US Pat. No. 5,700,597).

The IPDL JPO Machine translation for JP 06-060877 A discloses the all the limitations of claim 25 except that the lithium secondary battery has a capacity of 2 Ah or more.

Zhong et al '597 teach a lithium battery as a high energy density source for an electric vehicle (col. 1, lines 20-25).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the lithium secondary battery in the electric vehicle because a lithium secondary battery has high energy density, is light weight, and would not cause exhaust air polluting substances during the operation of the electric vehicle.

It would have also been obvious to one of ordinary skill in the art at the time the invention was made to produce a lithium secondary battery having a capacity of 2Ah or more in order to operate a high energy consuming electronic device such as an electric vehicle since the power requirements of electronic devices differ and it would have been obvious to manufacture lithium batteries with varying capacities for different applications. A person of ordinary skill in the art would be motivated to and would be knowledgeable about how to scale up the amount of active material necessary in a lithium secondary battery in order to provide enough electricity to operate an electric vehicle or any other electronic device.

Response to Arguments

14. Applicant's arguments filed 3/4/2004 have been fully considered but they are not persuasive.

With respect to applicant's assertion on page 18 of the amendment with regard to the 112 first paragraph rejections for the scope of enablement of the claims that a rejection for lack of enablement can only be made if there is reason to doubt the objective truth of the statements that the invention would be useful as disclosed in the specification is not persuasive because the scope of enablement of the claims follows two stages of inquiry set forth in MPEP 2164.08 and the objective truth of the statements of the invention would be useful is irrelevant and has

nothing to do with scope of enablement of the claims rejected under 35 USC 112 first paragraph.

The two stages of inquiry set forth in MPEP 2164.08 are to first determine how broad the claim is with respect to the disclosure and the second inquiry is to determine if one skilled in the art is enabled to make and use the entire scope of the claimed invention without undue experimentation. The Examiner has completed the two stages of inquiry above.

With respect to applicant's assertions that the enablement requirement of 35 USC 112 does not require an applicant discover which members within a generic group of materials function properly in accordance with the invention and that as noted in In re Grimme, 124 USPQ 499 that "that it is manifestly impracticable for an applicant who discloses a generic invention to give an example of every species falling within it, or even to name every such species", applicant is directed to the In re Grimme case law which states that where "a claimed group involves compounds which differ radically from each other, it may not be sufficient to identify group broadly and to name one or two compounds falling within it; on the other hand, in the case of a small and closely related group such as the halogens, naming of group should ordinarily be sufficient since nothing of consequence would be added by also naming each of the well known members of group". Applicant's claimed invention does not encompass members that are well known that fall under compounds that are organic bases and inorganic acids unitarily combined. Applicants' claimed invention encompasses at least thousands, if not millions of compounds for reasons given above and these innumerable compounds would involve compounds which are radically different from each other and it is not sufficient to give only 6 examples of what the claimed generic compound can be. The members falling under the claimed generic compound can not be readily envisioned as members of a halogen elements which are closely related.

Applicant also assertion that in In re Fuetterer 138 USPQ 217 that the CCPA held that there is no requirement that an applicant discover which of all the salts within the generic expression in the claim would function properly in the invention and that the court stated "the only undue burden which is apparent to us in the instant case is that which the Patent Office has attempted to place on the appellant-the Patent Office would require him to do research on the literally thousands of inorganic salts and determine which of these are suitable for incorporation into his claimed combination."

In response, the In re Fuetterer case is not an analogous situation to the presently claimed invention which specifically claims compound (b) by what it is and not what it does, that is compound (b) is not claimed functionally as was the situation in In re Fuetterer.

Conclusion

Any inquiry concerning this communication or earlier communications should be directed to examiner Susy Tsang-Foster, Ph.D. whose telephone number is (571) 272-1293. The examiner can normally be reached on Monday through Friday from 9:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick Ryan can be reached at (571) 272-1292.

The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

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applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

st/ *Susy Tsang-Foster*

Susy Tsang-Foster
Primary Examiner
Art Unit 1745